

CHICAGO AND
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APR 26 3 07 PM '78
CERTIFICATION UNIT



TRANSPORTATION COMPANY

RECORDATION NO. 9348 April 21, 1978
Filed & Recorded

BERNARD J. ALLEN
DIANE KOHLER-RAUSCH
JOAN A. THRAMM
ASSISTANT SECRETARIES

APR 26 1978 - 8 10 PM

8-116A012

INTERSTATE COMMERCE COMMISSION
Washington, D. C. 20423
Attn: Mr. Robert L. Oswald, Secretary

APR 26 1978
Date
Fee \$ 5.00

CC Washington

Gentlemen:

Pursuant to Section 20c of the Interstate Commerce Act, as amended, attached for recordation are Counterpart Nos. 1 to 5, inclusive of Indenture of Mortgage & Security Agreement dated as of 3/8/78.

The names and addresses of the parties to the transaction are as follows:

1. This Company, 400 W. Madison St., Chicago, IL 60606.
2. United States of America Secretary of Transportation acting through the Administrator of the Federal R.R. Administration, Attn: Associate Administrator for Federal Assistance, 400 7th St., S.W., Washington, D.C. 20590.

Enclosed is our check for \$50.00 to cover your recording fee. Please return Counterpart Nos. 1 to 4, inclusive, showing your recordation data.

Very truly yours,

Diane Kohler-Rausch
Diane Kohler-Rausch
Assistant Secretary

dmm
Enclosures

cc: R. L. Schardt* D. E. Stockham, Attn: R.S. Brenner
F. E. Cunningham* M. Shumate, Jr.
R. F. Guenther, Attn: J. James* R. D. Smith
R. W. Woodfill*

*w/copy of Indenture

Interstate Commerce Commission
Washington, D.C. 20423

4/27/78


OFFICE OF THE SECRETARY

Diane Kohler-Rausch
Assistant Secretary
Chicago & North Western Transportation Co
400 West Madison Street
Chicago, Illinois 60606

Dear Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on **4/26/78** at **2:25pm**,
and assigned recordation number(s) **9346**

Sincerely yours,


H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

9346
RECORDATION NO. Filed & Recorded

APR 26 1978 3 10 PM

INLAND STATE COMMERCE COMMISSION

COUNTERPART
No. 5 of 5

INDENTURE OF MORTGAGE AND
SECURITY AGREEMENT

THIS INDENTURE OF MORTGAGE AND SECURITY AGREEMENT (hereinafter, together with any amendments and supplements which may be made hereto, called "Mortgage and Security Agreement"), dated as of the 8th day of March, 1978, between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called "Company"), having its principal office at 400 West Madison Street, Chicago, Illinois, party of the first part, and the United States of America (hereinafter called "Mortgagee"), represented by the Secretary of Transportation (hereinafter called the "Secretary") acting through the Administrator of the Federal Railroad Administration or his designee (hereinafter called the "Administrator"), party of the second part,

WITNESSETH:

WHEREAS, pursuant to a certain agreement, dated March 8, 1978, by and between Mortgagee and Company, Mortgagee has, contemporaneously with the execution and delivery of this Mortgage and Security Agreement, agreed to guarantee certain obligations of Company; and

WHEREAS, all acts and things prescribed by law and by the Certificate of Incorporation and By-Laws of Company necessary to make this Mortgage and Security Agreement valid and legally binding on Company in accordance with its terms, have been duly done and performed;

NOW, THEREFORE, THIS INDENTURE OF MORTGAGE AND SECURITY AGREEMENT WITNESSETH, that in order to secure the payment, performance or observance of all Secured Obligations in accordance with their terms, and in consideration of the premises and of the guarantee provided for in the Financing Agreement, Company has granted, bargained, sold, conveyed, released, confirmed, mortgaged, pledged, granted

a security interest in, assigned, transferred and set over, and by these presents does hereby grant, bargain, sell, convey, release, confirm, mortgage, pledge, grant a security interest in, assign, transfer and set over, unto and in favor of Mortgagee and its successors and assigns, subject to the terms of this Mortgage and Security Agreement, all of the estate, right, title and interest of Company in and to the following described property, rights, privileges and franchises:

FIRST. All lines of railroad and tracks now or hereafter owned by Company, including the following (main lines of railroad now owned by Company are described in I through XX below, with approximate mileages shown being as at January 1, 1978):

	<u>Miles</u>
I A line of railroad beginning at the Passenger Terminal Station, at the intersection of Canal and Madison Streets, in the City of Chicago, Illinois, and extending in a westerly direction by way of Dixon, in the State of Illinois, thence westerly by way of Clinton, Cedar Rapids, and Boone, in the State of Iowa, to Council Bluffs, Iowa, having a length of about.....	484.42
II A line of railroad extending from Nelson, Illinois, southerly via Peoria to De Camp, Illinois, including a line from Kickapoo Junction to Peoria Junction, Illinois, having a length of about.....	201.58
III A line of railroad beginning at Missouri Valley, in the State of Iowa, and extending westerly (including between California Junction, Iowa, and Fremont, Nebraska) via Norfolk, Oakdale and Chadron, in the State of Nebraska, to Casper, in the State of Wyoming, having a length of about.....	635.40
IV A line of railroad beginning at Clybourn, in the City of Chicago, State of Illinois, and extending therefrom in a northwesterly direction by way of Crystal Lake and Harvard, in the State of Illinois, and Clinton Junc-	

	<u>Miles</u>
tion, Janesville, Madison and Elroy, in the State of Wisconsin, having a length of about	201.50
V A line of railroad beginning at Winona, Minnesota and extending westerly therefrom via Mankato and Tracy in the State of Minnesota, and thence by way of Huron and Pierre to Rapid City in the State of South Dakota, having a length of about	636.32
VI A line of railroad beginning at said Passenger Terminal Station, in the City of Chicago, State of Illinois, and extending therefrom northerly by way of Evanston, Illinois, Kenosha, Racine, Milwaukee, Fond du Lac, Oshkosh, Green Bay, in the State of Wisconsin, and via Menominee and Escanaba to Ishpeming, in the State of Michigan, having a length of about	387.41
VII A line of railroad beginning at Hortonville, in the State of Wisconsin, and extending northwesterly by way of Eland, Monico, Rhinelander and Hurley, in the State of Wisconsin, to Ashland, Wisconsin, having a length of about	236.00
VIII A line of railroad beginning at the Burlington Northern Railway Terminal at Minneapolis, Minnesota and extending in an easterly direction via St. Paul and Stillwater Junction, Minnesota, and Hudson, Woodville, Menomonie Junction, Fairchild, Merrilan to Elroy in the State of Wisconsin, having a length of about	187.78
IX A line of railroad beginning at Northline, Wisconsin, and extending therefrom northerly via New Richmond, Turtle Lake, Spooner, Trego, Hayward, Cable, Ashland Junction and Washburn, to the terminal at Bayfield, Wisconsin, having a length of about	177.53

	<u>Miles</u>
X A line of railroad beginning at Eau Claire, Wisconsin, and extending therefrom northerly via Chippewa Falls, Rice Lake, Tuscobia, Spooner, Trego, Hawthorne, Itasca and Superior, Wisconsin, to Duluth, Minnesota, having a length of about.	152.73
XI A line of railroad beginning at Passenger Terminal at St. Paul, Minnesota, and extending therefrom southwesterly via Cliff, Shakopee, Merriam, Mankato, Lake Crystal, Madelia, St. James and Worthington, Minnesota and LeMars, Iowa to Sioux City, Iowa, having a length of about.	241.23
XII A line of railroad beginning at Tekamah, Nebraska and extending therefrom southerly via Blair to Omaha, Nebraska, having a length of about.	45.32
XIII A line of railroad extending from Dubuque, Iowa, to Oelwein, Iowa, having a length of about.	74.68
XIV A line of railroad extending from Oelwein, Iowa, to the Cities of St. Paul and Minneapolis, Minnesota, having a length of about.	178.12
XV A line of railroad extending from Oelwein, Iowa, southwesterly through the Cities of Waterloo, Marshalltown and Des Moines, Iowa, St. Joseph, Missouri, and Leavenworth, Kansas, to Kansas City, Missouri, having a length of about.	318.28
XVI A line of railroad extending from Hayfield, Minnesota, by way of Mason City and Fort Dodge, Iowa, to Sommers, Iowa, having a length of about.	136.21
XVII A line of railroad extending from Oelwein, Iowa, to Clarion, Iowa, having a length of about.	98.09

	<u>Miles</u>
XVIII A line of railroad beginning in Minneapolis, Minnesota, and extending in a southwesterly direction to Hopkins, Minnesota, then in a southerly direction to Albert Lea, Minnesota, having a length of about	104.90
XIX A line of railroad beginning at Lake Mills, Iowa and extending in a southwesterly direction to Fort Dodge, Iowa, having a length of about	88.62
XX A line of railroad beginning in Northwood, Iowa and extending in a southerly direction to Manly, Mason City, Marshalltown and Oskaloosa to Albia, all in the State of Iowa, having a length of about	179.29
XXI All branch lines owned by the Company and all lines of railroad owned by the Company crossing or connecting with any of the lines described above, or crossing or extending from points on said crossing or connecting lines.	
XXII All and singular the main tracks owned by the Company additional to first main track and used as part of and in connection with any of the main, branch, crossing or connecting lines referred to above.	
XXIII All and singular the spur tracks, yard tracks, side tracks, turnouts, passing tracks and shop tracks owned by the Company and used, or provided for use in connection with any of the main, branch, crossing or connecting lines referred to above.	
XXIV All and singular other lines of railroad and tracks now or hereafter owned by the Company.	

SECOND. All leases, contracts, agreements, rights and privileges, now owned or hereafter acquired by Company, or in which Company now has or may hereafter have any interest, for use upon or in con-

nection with or appertaining to any of the lines of railroad of Company or relating to the ownership, use or operation of any terminals or union or other stations situated along, or at the terminal of, any of the lines of railroad of Company, or relating to the use of any telegraph, telephone or other communication facilities along any of the lines of railroad of Company, including the following leases, contracts and agreements now owned by Company (approximate mileages shown being as at January 1, 1978):

	<u>Miles</u>
(1) With the Union Pacific Railroad Company, covering trackage rights between Council Bluffs, Iowa and South Omaha, Nebraska, having a length of about.....	8.73
(2) With the Penn Central Transportation Company, covering trackage rights between Roosevelt and Pershing Road, Chicago, Illinois, having a length of about.....	2.77
(3) With the Peoria and Pekin Union Railway Company, covering joint use of freight station and other facilities at Peoria, Illinois and trackage rights between Peoria Junction and Peoria, Illinois, having a length of about....	2.02
Also trackage rights between Iowa Junction and C.&N.W. Jct., near Peoria, Illinois, having a length of about.....	.77
(4) With the Burlington Northern, Inc. granting permanent trackage rights between Illco and Shobon, Wyoming, having a length of about.....	87.16
(5) With Soo Line Railroad Company, covering perpetual trackage rights between Arpin and Marshfield, Wisconsin, having a length of about.....	11.64
(6) With Soo Line Railroad Company, covering trackage rights between Bessemer, Michigan and Hoyt, Wisconsin, having a length of about.....	13.85
(7) With the Illinois Terminal Railroad Co. covering trackage rights between Madison, and Bridge Junction, Illinois, having a length of about.....	2.58

	<u>Miles</u>
(8) With Green Bay and Western Railroad Company, covering trackage rights in Green Bay, Wisconsin, having a length of about.....	.30
(9) With the Illinois Central Railroad Company, covering trackage rights between Council Bluffs, Iowa, and Omaha, Nebraska, having a length of about.....	4.51
(10) With the Lake Superior and Ishpeming Railroad Company, covering trackage rights between Ishpeming, and Copsps Spur, Michigan, having a length of about.....	4.03
(11) With the Burlington Northern, Inc. covering trackage rights in Des Moines, Iowa, having a length of about....	.52
(12) With the Burlington Northern, Inc., covering trackage rights in St. Joseph, Missouri, having a length of about....	.81
(13) With St. Joseph Terminal Railroad Company, covering trackage rights in St. Joseph, Missouri, having a length of about40
(14) With the Atchison, Topeka & Santa Fe Railway Co. covering trackage rights between St. Joseph and Bee Creek, Missouri, having a length of about.....	7.63
(15) With the Leavenworth Depot & Railroad Company, covering trackage rights in Leavenworth, Kansas, having a length of about.....	.20
(16) With Union Pacific Railroad Company, covering trackage rights in Leavenworth, Kansas, having a length of about..	.06
(17) With the Missouri Pacific Railroad Company, covering trackage rights between Leavenworth, Kansas and Kansas City, Kansas, having a length of about.....	24.88
(18) With the Kansas City Terminal Railroad Company, covering trackage rights in Kansas City, Missouri, having a length of about.....	2.84

	<u>Miles</u>
(19) With Winona Bridge Co., covering trackage rights in Winona, Minnesota, having a length of about06
(20) With Burlington Northern, Inc. covering trackage rights in Winona, Minnesota, having a length of about	1.22
(21) With the Chicago, Rock Island and Pacific Railroad Co., covering trackage rights in Des Moines, Iowa, having a length of about	3.91
(22) With Burlington Northern, Inc., covering trackage rights between Superior, Wisconsin and Duluth, Minnesota, having a length of about	1.59
(23) With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights in Milwaukee, Wisconsin, having a length of about	10.89
(24) With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights between Ruthven and Spencer, Iowa, having a length of about	12.45
(25) With the Illinois Central Railroad Company, covering trackage rights between Tara and Ft. Dodge, Iowa, having a length of about	5.67
(26) With the Chicago, Rock Island and Pacific Railroad Co., covering trackage rights between Givin and Eddyville, Iowa, having a length of about	3.56
(27) With the Chicago, Rock Island and Pacific Railroad Co., covering trackage rights between Albert Lea, Minnesota and Northwood, Iowa, having a length of about	16.15
(28) With the St. Paul Union Depot Co., covering trackage rights in St. Paul, Minnesota, having a length of about74
(29) With Burlington Northern, Inc., covering trackage rights between St. Paul and Minneapolis, Minnesota, having a length of about	10.89

	<u>Miles</u>
(30) With the Illinois Central Railroad Company, covering trackage rights between LeMars and Sioux City, Iowa, having a length of about	25.95
(31) With the Soo Line Railroad Company, covering trackage rights between Wisconsin Rapids and Nekoosa, Wisconsin, having a length of about	6.56
(32) With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights between Tunnel City, Wisconsin and Winona, Minnesota, having a length of about	67.79
(33) With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights between Wisconsin Rapids and Necedah, Wisconsin, having a length of about	37.42
(34) With the Burlington Northern, Inc., covering trackage rights between Sioux City, Iowa and Ferry, Nebraska, having a length of about	3.82
(35) With the Burlington Northern, Inc., covering trackage rights in Des Moines, Iowa, having a length of about	2.65
(36) With the Union Pacific Railroad Company, covering trackage rights between Ames, Iowa and Fremont, Nebraska, having a length of about	5.60
(37) With the Chicago, Rock Island and Pacific Railroad Company, covering trackage rights between South St. Paul and Inver Grove, Minnesota, having a length of about	3.66
(38) With the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, covering trackage rights in Aberdeen, South Dakota, having a length of about	1.90

Miles

- (39) With the Burlington Northern, Inc., covering trackage rights between Minneapolis and St. Paul, Minnesota, having a length of about 9.82

THIRD. All rights of ways, lands, fixtures, structures, improvements, tenements and hereditaments of whatever kind or description and wherever situated, including all additions, betterments and improvements thereon or thereto, now owned or at any time hereafter acquired by Company or in which Company now has or may hereafter have any interest.

✓ FOURTH. All equipment (whether or not transportation equipment), and additions, betterments and improvements thereto, inventory, accounts, contract rights, chattel paper and general intangibles, now owned or hereafter acquired by Company or in which Company now has or may hereafter have any interest.

FIFTH. All shares of stock, proprietary interest and indebtedness (whether or not evidenced by any instrument), now owned or hereafter acquired by Company, of or in any Subsidiary of Company (delivery of certificates for such shares of stock and of evidences of such proprietary interest or indebtedness, however, being subject to the provisions of Section 3.01 hereof), including the following shares of stock now owned by Company in the following Subsidiaries of Company:

- (1) 35,341 shares of common stock of Des Moines and Central Iowa Railway Company, an Iowa corporation.
- (2) 1,000 shares of common stock of Minneapolis Industrial Railway Company, a Delaware corporation.
- (3) 100 shares of common stock of North Western Communications, Inc., an Illinois corporation.
- (4) 100 shares of common stock of North Western Leasing Company, a Delaware corporation.

- (5) 700 shares of common stock of Oshkosh Transportation Company, a Wisconsin corporation.
- (6) 3,000 shares of common stock of The Railway Transfer Company of the City of Minneapolis, a Minnesota corporation.
- (7) 200 shares of common stock of Wisconsin Town Lot Company, a Wisconsin corporation.
- (8) 100 shares of common stock of NW Railquip, Inc. an Illinois corporation.

SIXTH. All corporate rights, powers, franchises, privileges and immunities now or hereafter owned or possessed by Company which now or at any time hereafter may be necessary for or appurtenant to the use, operation, management, maintenance, renewal, alteration or improvement of any of the lines of railroad of Company or of any other property now or hereafter subject to the lien and security interest of this Mortgage and Security Agreement.

SEVENTH. All other property and interests in property of every kind and description which Company may hereafter convey, mortgage, pledge, assign or transfer to Mortgagee.

EIGHTH. All rents, issues, tolls, profits, dividends and other income from, and proceeds of, the premises and property herein or hereafter mortgaged, pledged, conveyed or assigned to Mortgagee, or in which a security interest is herein or hereafter granted to Mortgagee, or intended so to be.

For purposes of the foregoing:

(1) The term "lines of railroad" shall include all main or branch or cut-off lines of railroad, and all spur, industrial, switch, connecting, storage, yard, terminal or other tracks, and unless otherwise specified, "lines of railroad of Company" shall include all lines of railroad which Company may own in fee, either solely or jointly, or over which Com-

pany may operate or have any right to operate under any lease or track-age or other agreement.

(2) The terms "equipment", "inventory", "accounts", "contract rights", "chattel paper", and "general intangibles" shall have the same respective meanings as such terms had under the Uniform Commercial Code—Secured Transactions, as in effect in the State of Illinois on June 1, 1972.

(3) Out of the grants hereby made, the last day of the term of each leasehold estate (whether falling within the general or particular description of property herein) now or hereafter enjoyed by Company is hereby excepted and reserved.

(4) It is not intended to subject to the lien and security interest hereof, and this grant shall not be deemed to apply to:

(a) shares of stock or instruments (as the term "instruments" was defined in the Uniform Commercial Code—Secured Transactions, as in effect in the State of Illinois on June 1, 1972), now owned or hereafter acquired by Company, which shall have been issued by a Person which is not a Subsidiary of Company, unless the same are hereby or hereafter shall be specifically pledged hereunder; and

(b) any of the property and franchises of any other Person, any securities of which or proprietary interest in which may be now owned or hereafter acquired by Company; provided that nothing herein shall be deemed to diminish the lien and security interest of this Mortgage and Security Agreement upon any shares of stock, proprietary interest or indebtedness, now owned or hereafter acquired by Company, of or in any Subsidiary of Company, or upon any securities of or proprietary interest in any other Person which may be hereafter pledged, assigned or transferred to Mortgagee.

(5) The provisions of this Mortgage and Security Agreement shall be construed, and the lien and security interest of this Mortgage and Security Agreement at any time shall be determined, in conformity

with the following provisions, which shall prevail over any other provision of this Mortgage and Security Agreement in the event of any inconsistency therewith:

(a) Subject to the limitations of Article V hereof, the provisions of this Mortgage and Security Agreement which may reasonably be construed to subject to the lien and security interest hereof property which may be hereafter acquired by Company, or in which Company may hereafter acquire an interest, shall be construed as applying to the interest of Company in such property, and a liberal scope and effect shall be given to such provisions.

(b) Nothing in this Mortgage and Security Agreement, express or implied, is intended or shall be construed to limit the right or power of Company, which is hereby expressly reserved:

(i) to acquire any property or interest therein subject to the liens and charges existing thereon at the time of acquisition thereof, or to create any purchase money lien or charge thereon at the time of acquisition thereof, and

(ii) to subject transportation equipment constructed or acquired for its use, at any time within three years from the date the same shall be so constructed or acquired, to any Equipment Obligations which Company may desire to create or undertake for the purpose of financing the cost of such transportation equipment, and of upgrading and repairs made thereto; and the right, charge, lien or title of any such Equipment Obligation with respect to transportation equipment subjected thereto as aforesaid shall in all respects be free from and prior to the lien and security interest of this Mortgage and Security Agreement, and the lien and security interest of this Mortgage and Security Agreement shall attach only to the right, title and interest of Company then or thereafter existing with respect to such transportation equipment.

(c) Nothing in this Mortgage and Security Agreement, express or implied, is intended or shall be construed to limit the right

or power of Company, which is hereby expressly reserved, to consolidate with, merge into, or convey or lease all or substantially all of the Mortgaged Property to, another corporation or corporations, or to merge another corporation or corporations into the Company, or to acquire all or any part of the property of another corporation or corporations, all as provided and with the exceptions and upon the terms and conditions set forth in Article V hereof.

(d) Nothing in this Mortgage and Security Agreement, express or implied, is intended or shall be construed to limit the right or power of Company, which is hereby expressly reserved, to take any action (other than an action involving the breach of Article II hereof), without obtaining the waiver or consent of the Mortgagee and free of any and all restrictions on and requirements in connection with such action under this Mortgage and Security Agreement (except to the extent such restrictions and requirements are not more burdensome in nature upon Company than the most burdensome, if any, at the time of such action applicable with respect to such action under any mortgage included in clause (a) of the definition of Permitted Encumbrances and the Chemco Mortgage), if, at the time of such action:

(i) such action affects property subject to the lien of, or rights or obligations under, at least one mortgage included in clause (a) of the definition of Permitted Encumbrances (other than a mortgage securing indebtedness solely to an Affiliate or to an employee of Company or of an Affiliate) or the Chemco Mortgage; and

(ii) such action is not prohibited by the provisions (giving effect to any waiver or consent obtained by the Company) of each mortgage included in clause (a) of the definition of Permitted Encumbrances and of the Chemco Mortgage.

(e) Nothing contained in this Mortgage and Security Agreement is intended in any way to authorize, or shall in any way

authorize, Company to take or permit to be taken any action which would involve the breach of any covenant or agreement on the part of Company under or pursuant to the Financing Agreement.

TO HAVE AND TO HOLD unto Mortgagee and its successors and assigns, forever, all property, real, personal and mixed, and tangible and intangible, hereby mortgaged, pledged, conveyed, assigned or transferred, or in which a security interest is granted, or intended so to be, or which may in any manner become subject to the lien and security interest of this Mortgage and Security Agreement, whether by indenture supplemental hereto or otherwise (all of which property at any given time subject to the lien and security interest of this Mortgage and Security Agreement, whether by the terms of this Mortgage and Security Agreement, including the after-acquired property clauses hereof, or by subsequent transfer, delivery or pledge to the Mortgagee, or otherwise, is herein sometimes referred to as the "Mortgaged Property");

UNDER AND SUBJECT, HOWEVER, to the prior or parity lien and security interest of all Permitted Encumbrances (hereinafter defined) with respect to any of the Mortgaged Property, but in the case of each such Permitted Encumbrance, only to the extent that the lien and security interest thereof by its terms attaches and constitutes a valid, enforceable lien or security interest which, in the case of any bankruptcy, reorganization, insolvency, or similar proceedings pertaining to the enforcement of creditors' rights generally, constitutes a valid and perfected lien or security interest enforceable against a trustee in bankruptcy or similar representative of general creditors; provided, however, that the lien and security interest hereunder shall be on a parity with such lien and security interest of any Permitted Encumbrance only if and to the extent that such parity shall not violate or breach any covenant, term or condition applicable to such Permitted Encumbrance;

BUT NEVERTHELESS as security for, and in order to enforce, the payment, performance or observance of all Secured Obligations in accordance with their terms;

AND IT IS HEREBY COVENANTED, AGREED AND DECLARED that the Mortgaged Property is to be held and disposed of upon and subject to the following covenants, agreements, conditions and understandings:

ARTICLE I

DEFINITIONS

The terms defined in this Article I shall (unless the context otherwise requires), for all purposes of this Mortgage and Security Agreement, have the respective meanings specified in this Article I, and each such term defined in the singular shall include the plural and each such term defined in the plural shall include the singular.

Affiliate. The term "Affiliate" shall mean with respect to any Person, any other Person, or any group of other Persons acting in concert, directly or indirectly controlling, controlled by or under common control with such Person.

Chemco Mortgage. The term "Chemco Mortgage" shall mean the Indenture of Mortgage and Security Agreement between Company and Chicago and North Western Railway Company (now Northwest Chemco, Inc.), dated as of June 1, 1972, as heretofore or hereafter from time to time supplemented or amended in a manner not involving breach of the Financing Agreement.

Company. The term "Company" shall mean Chicago and North Western Transportation Company, a Delaware corporation, and its successors and assigns in accordance with the provisions of Article V hereof.

Equipment Obligations; transportation equipment. The term "Equipment Obligation" shall mean any obligation of Company issued under, and secured by a right, charge, lien or title with respect to any transportation equipment evidenced by an equipment trust agreement, lease, conditional sale agreement, chattel mortgage or other writing, or any of such writings. The term "transportation equipment" shall include

locomotives, freight-train cars, passenger-train cars, work equipment, roadway machines (such terms having for the purposes of this definition, the meanings assigned to them under the Uniform System of Accounts), trailers, containers and highway vehicles and appurtenances attached to the foregoing (including automobile racks, automobile frame racks, heating and cooling units, machinery, tie down equipment and other specialized equipment designed for carriage and protection of lading), airplanes, vessels, boats, tugs, lighters, floats, barges and ferries, and any and all other vehicles which may be used by Company for the transportation of freight or material or for the carriage of passengers or its employees.

Event of Default. The term "Event of Default" shall have the meaning set forth in Section 6.01 hereof.

Financing Agreement. The term "Financing Agreement" shall mean a certain agreement dated as of March 8, 1978, by and between Mortgagee and Company, in which Mortgagee has agreed to guarantee payment of certain obligations of Company, and any other agreement which may be hereafter entered into by Mortgagee and Company which by its terms provides that indebtedness, liabilities and obligations of Company shall be secured by this Mortgage and Security Agreement, as said agreement or agreements may hereafter from time to time be supplemented or amended.

Great Western First Mortgage. The term "Great Western First Mortgage" shall mean the Indenture of Mortgage and Deed of Trust, originally executed by Chicago Great Western Railway Company to Guaranty Trust Company of New York (now Morgan Guaranty Company, New York), Trustee, dated as of January 1, 1938, as supplemented and amended on or prior to the date hereof and as hereafter from time to time supplemented or amended in a manner not involving breach of Section 2.03 hereof or of the Financing Agreement.

Great Western General Income Mortgage. The term "Great Western General Income Mortgage" shall mean the Indenture of Mortgage

and Deed of Trust, originally executed by Chicago Great Western Railway Company to The First National Bank of Chicago, Trustee, dated as of January 1, 1938, as supplemented and amended on or prior to the date hereof and as hereafter from time to time supplemented or amended in a manner not involving breach of Section 2.03 hereof or of the Financing Agreement.

Including. The term "including" shall mean including, without limiting the generality of the foregoing.

M. & St. L. Mortgage. The term "M. & St. L. Mortgage" shall mean the Indenture of Mortgage and Deed of Trust, originally executed by The Minneapolis & St. Louis Railway Company to The First National Bank of Chicago, Trustee, dated as of October 1, 1960, as supplemented and amended on or prior to the date hereof and as hereafter from time to time supplemented or amended in a manner not involving breach of Section 2.03 hereof or of the Financing Agreement.

Mortgage and Security Agreement. The terms "this Mortgage and Security Agreement", or "the Mortgage and Security Agreement" shall mean this Indenture of Mortgage and Security Agreement, as originally executed or as the same may from time to time be supplemented or amended by any supplemental indenture(s) thereto executed by Company and Mortgagee.

Mortgagee. The term "Mortgagee" shall mean the United States of America, represented by the Secretary acting through the Administrator, and its successors and assigns, by subrogation or otherwise, in whole or in part.

New Carrier Affiliate. The term "New Carrier Affiliate" shall mean an Affiliate which after June 1, 1972 shall acquire by any consolidation, merger or conveyance all or substantially all of the property of any other corporation which immediately prior to such consolidation, merger or conveyance shall have been a Class I Carrier (as defined by the rules of the Interstate Commerce Commission in force on June 1, 1972) and not an Affiliate of Company.

North Western First Mortgage. The term "North Western First Mortgage" shall mean the Indenture of Mortgage and Deed of Trust, originally executed by Chicago and North Western Railway Company to The First National Bank of Chicago, Trustee, dated as of January 1, 1939, as supplemented and amended on or prior to the date hereof and as hereafter from time to time supplemented or amended in a manner not involving breach of Section 2.03 hereof or of the Financing Agreement.

Omaha First Mortgage. The term "Omaha First Mortgage" shall mean the First Mortgage Indenture, originally executed by Chicago, Saint Paul, Minneapolis and Omaha Railway Company to Central Union Trust Company of New York (now Manufacturers Hanover Trust Company), Trustee, dated May 1, 1929, as supplemented and amended on or prior to the date hereof and as hereafter from time to time supplemented or amended in a manner not involving breach of Section 2.03 hereof or of the Financing Agreement.

Other Mortgages. The term "Other Mortgages" shall mean all general mortgages hereafter entered into by Company as from time to time supplemented or amended, all in a manner not involving breach of Section 2.03 hereof or of the Financing Agreement, which create liens, charges or security interests both (i) having priority to or preference over, or on an equality to or parity with, the lien and security interest of this Mortgage and Security Agreement upon the Mortgaged Property or any part thereof and (ii) which would not constitute Permitted Encumbrances in the absence of clause (a) of the definition of Permitted Encumbrances.

Permitted Encumbrances. The term "Permitted Encumbrances" shall mean, as of any particular time, whether now or hereafter, each of the following:

- (a) the respective liens of each of the North Western First Mortgage, Great Western First Mortgage, Great Western General Income Mortgage, M. & St. L. Mortgage, Omaha First Mortgage and Other Mortgages;

(b) all other liens, encumbrances, and security interests outstanding on the date hereof (including, without limitation, the Chemco Mortgage and all right, title, lien or security interest of all Equipment Obligations outstanding on the date hereof);

(c) all right, title, lien or security interest, on or with respect to any transportation equipment or any lease thereof or agreement with respect thereto, of each Equipment Obligation, hereafter issued and incurred within three years after such transportation equipment is constructed or acquired;

(d) purchase money liens and charges created at the time of acquisition thereof on property acquired after the date hereof and liens and charges on any such property existing at the time of acquisition thereof;

(e) subject to Section 2.03 hereof, other liens on an equality to or on a parity with, but not having priority to or preference over, the lien of the Chemco Mortgage on all or any part of the Mortgaged Property to secure indebtedness, not exceeding the aggregate principal amount of \$15,000,000 at any one time outstanding;

(f) liens on shares of stock of any Subsidiary of Company to secure, or otherwise in favor of the holder of, any indebtedness, liability or obligation of or with respect to such Subsidiary;

(g) liens for taxes, assessments or governmental charges not then delinquent; liens for workmen's compensation awards and similar obligations not then delinquent; liens or encumbrances in connection with litigation against Company concerning claims for personal injuries or damages to property arising out of the operation of business which are entitled to priority over the lien and security interest of this Mortgage and Security Agreement by operation of law; other liens not exceeding \$100,000 in the aggregate, which arise out of litigation against Company and are prior to the lien and security interest of this Mortgage and Security Agreement; liens for the payment or discharge of which provisions satisfactory to Mortgagee have been made; mechanics', laborers', materialmen's and similar liens not at the time delinquent; any

liens irrespective of amount, whether or not delinquent, the validity of which is being contested at the time by Company in good faith; and undetermined liens or charges incidental to construction;

(h) liens securing indebtedness neither payable nor assumed nor guaranteed by Company, nor on which it customarily pays interest, on property with respect to which Company owns easements or rights of way;

(i) rights reserved to or vested in any governmental authority or agency or in any municipality by the terms of any franchise, grant, license or permit or by any provision of law to terminate such franchise, grant, license or permit or to purchase or appropriate or recapture or to designate a purchaser of any of the Mortgaged Property; or to demand and collect any tax or other compensation for the use of streets or other public places or to control or regulate the Mortgaged Property;

(j) any obligation or duty affecting the Mortgaged Property or the uses, removal, control or regulation thereof arising under any provision of law or any franchise, grant, license or permit granted or issued by any public authority;

(k) rights of lessees under leases from Company, and interests of others than Company in property owned jointly or in common; and

(l) easements, rights of way, exceptions, reservations, restrictions, conditions, limitations, covenants, adverse rights or interests and any other defects or irregularities in title affecting the Mortgaged Property which in the opinion of Company do not materially affect the use of the Mortgaged Property for the purposes for which it is held by Company and may be properly ignored as to their effect upon the lien and security interest of this Mortgage and Security Agreement.

Person. The term "Person" shall mean any natural person, corporation, firm, joint venture, trust or other unincorporated association, government or governmental agency.

Prior or Parity Mortgage. The term "Prior or Parity Mortgage" shall mean any mortgage which constitutes a Permitted Encumbrance.

Secured Obligations. The term "Secured Obligations" shall mean:

(a) all indebtedness, liabilities and obligations now or hereafter existing or arising of Company to Mortgagee under, or by reason of, any agreement (including any lawful claim of Mortgagee for specific performance or damages on account of breach, of such agreement) of Company contained in the Financing Agreement or in any writing executed pursuant to the Financing Agreement (including this Mortgage and Security Agreement), or in connection with the Financing Agreement or the consummation of any transaction contemplated thereunder; and

(b) all indebtedness, liabilities and obligations, now or hereafter existing or arising, of Company under any debt instrument of Company which, having been guaranteed by Mortgagee as to payment thereof in the Financing Agreement, remain unpaid to an agency of the United States of America upon termination of such guarantee.

Subsidiary. The term "Subsidiary" of any Person shall mean any corporation more than 50% of the outstanding shares of capital stock of which having ordinary voting power (not dependent on default) for the election of directors, or any non-corporate entity more than 50% of the outstanding proprietary interest in which, is owned directly or indirectly by such Person.

Uniform System of Accounts. The term "Uniform System of Accounts" shall mean the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission (or any regulatory agency successor thereto), as at the time in effect.

ARTICLE II

COVENANTS OF COMPANY

SECTION 2.01. *Maintenance and Insurance Proceeds.* Subject to the provisions of Articles IV and V, Company agrees that it will:

(a) maintain the tangible property subject to the lien of this Mortgage and Security Agreement in good order and condition, reasonable wear and tear excepted, and from time to time make all needful and proper repairs thereto, to the extent (i) needful and proper for the efficient and economic operation of its properties and (ii) consistent with its capital resources; and

(b) apply to the acquisition, repair or improvement of property subject to the lien of this Mortgage and Security Agreement an amount equal to the excess, if any, of (i) amounts realized by Company from the proceeds of insurance on property subject to the lien of this Mortgage and Security Agreement, over (ii) amounts so realized which are required to be deposited or applied pursuant to the terms of mortgages included in clause (a) of the definition of Permitted Encumbrances.

SECTION 2.02. *Covenant Against Liens.* Company agrees that it will not voluntarily create, or suffer to be created or to arise, any lien, charge or security interest, other than Permitted Encumbrances, having priority to or preference over, or on an equality to or parity with, the lien and security interest of this Mortgage and Security Agreement upon the Mortgaged Property or any part thereof.

SECTION 2.03. *Permitted Principal Amount of General Mortgages Constituting Permitted Encumbrances.* Company agrees that it will not incur indebtedness secured by mortgages included in clause (a) or by liens included in clause (e) of the definition of Permitted Encumbrances exceeding an aggregate principal amount outstanding on the date the Company incurs or obligates itself to incur such indebtedness, whichever is earlier, equal to \$80 million plus its consolidated net income

(or less its consolidated net loss) as reported to its shareholders for the period (taken as a single accounting period) beginning on January 1, 1977 and ending at the end of the month which is not less than 30 nor more than 60 days prior to such date of incurrence of, or obligation to incur, such indebtedness, less any net increase (or plus any net decrease) since January 1, 1977 reflected therein in the balance of Account 743, Other Deferred Charges, consolidated, and less any dividends paid or declared on its stock since January 1, 1977. Months included in such period which are subsequent to the period included in the last report to its shareholders shall be included on the basis on which they would be included in the report to shareholders for the period which includes said months.

SECTION 2.04. *Further Assurances.* Company agrees that it will execute and deliver to Mortgagee such instruments (including financing statements) as Mortgagee may from time to time reasonably request for the purpose of evidencing, confirming, perfecting or continuing in effect any lien or security interest granted or intended to be granted hereunder.

SECTION 2.05. *Compliance with Financing Agreement.* Company agrees that it will duly and punctually perform, when due, all of its agreements and obligations under or pursuant to the Financing Agreement.

SECTION 2.06. *Deposit and Withdrawal of Cash.* Company agrees that it will deposit with Mortgagee cash in an amount equal to the excess, if any, from time to time of:

(a) the proceeds (including the fair market value of non-cash proceeds) of the disposition of all property released from the lien of this Mortgage and Security Agreement pursuant to the second and third paragraphs of Section 4.02 hereof;
over:

(b) the cumulative total of amounts charged on Company's books of account to its investment in property accounts for the acquisition or improvement on and after the date of the first release referred to in subparagraph (a) of this Section 2.06 of property

which is or upon acquisition shall become subject to the lien of this Mortgage and Security Agreement plus (but only to the extent, and only so long as, the aforementioned "amounts charged" are inadequate to offset deposits which would otherwise be required) the amount, if any, of indebtedness secured by mortgages included in clause (a) or by liens included in clause (e) of the definition of Permitted Encumbrances which Company would be allowed to incur (but has not at that time incurred) under Section 2.03 hereof; provided, however, that such reliance on such allowance under Section 2.03 shall reduce Company's rights under Section 2.03 to the extent of, but only during the period of, such reliance.

Except during the period of an Event of Default hereunder, any cash so deposited may be withdrawn by Company upon delivery to Mortgagee of a certificate by the Vice President-Finance, Comptroller or other chief financial or accounting officer of Company to the extent that said officer therein certifies that the excess which constituted the requirement for the deposit has been reduced or eliminated.

ARTICLE III PLEDGED SECURITIES

SECTION 3.01. *Action to Effect Pledge.* Company agrees that it will promptly take such action as Mortgagee may from time to time request, which in the opinion of counsel for Mortgagee is necessary and desirable in order to effectively pledge and subject to the lien and security interest of this Mortgage and Security Agreement, all shares of stock, and all proprietary interest and all evidences of indebtedness directly owned by Company of or in all Subsidiaries of Company, or such thereof as may be specified in such request; provided, however, that Company shall not be required to take any such action which in the opinion of counsel for Company would involve the breach by Company of any covenant or agreement with respect to any Permitted Encumbrance. In the event any action pursuant to this Section shall involve the breach by Company of any covenant or agreement with respect to any Permitted Encumbrance created after such action,

Mortgagee will take such action as Company may from time to time reasonably request which in the opinion of counsel for Company is necessary in order to avoid such breach. Counsel for Mortgagee and counsel for Company may be their respective house counsel unless and except to the extent that the other party hereto (a) requests that the opinion be given by independent counsel and (b) agrees to pay the fees and expenses of independent counsel with respect thereto.

SECTION 3.02. *Rights of Company.* So long as no Event of Default shall have occurred and be continuing, Company shall be entitled, as against Mortgagee, to exercise all rights of ownership (including any voting rights) with respect to all shares of stock, proprietary interests and evidences of indebtedness at the time subject to the lien and security interest of this Mortgage and Security Agreement, and to receive all dividends, distributions and other payments of every character thereon or with respect thereto.

ARTICLE IV

POSSESSION, USE AND RELEASE OF MORTGAGED PROPERTY

SECTION 4.01. *Possession and Use of Mortgaged Property by Company.* While Company shall remain in possession of the Mortgaged Property or any part thereof, it shall be entitled, as against Mortgagee, to manage, operate, use, enjoy and be suffered and permitted to remain in the actual and undisturbed possession of all and singular the Mortgaged Property and to receive, take and use all rents, income, issues, tolls, profits, dividends, income and proceeds thereof.

SECTION 4.02. *Releases.* Any part of the Mortgaged Property which is subject to the lien of any Prior or Parity Mortgage shall, if released from the lien of such Prior or Parity Mortgage in compliance with the provisions thereof, be automatically released from the lien of this Mortgage and Security Agreement without the necessity of any accounting to Mortgagee, and Mortgagee will execute such instruments

of release thereof from the lien and security interest hereunder as Company may reasonably request.

Any part of the Mortgaged Property which consists of real estate and is not subject to the lien of any Prior or Parity Mortgage may be released from the lien of this Mortgage and Security Agreement only under such circumstances (including compliance, insofar as practicable, with procedures) as would, if such part of the Mortgaged Property were subject to the lien of the North Western First Mortgage, accomplish the release thereof from the lien of such Mortgage under the provisions thereof in effect on June 1, 1972 (except that any reference in such Mortgage to the Trustee shall be deemed to be to Mortgagee and except that any cash deposited with Mortgagee in connection with such release shall, if at the time no Event of Default shall have occurred and be continuing, be released to or upon the order of Company upon its request), and Mortgagee will execute such instruments of release thereof from the lien and security interest hereunder as Company may reasonably request.

Any part of the Mortgaged Property which does not consist of real estate, which is not subject to the lien of any Prior or Parity Mortgage and which is disposed of by Company to a transferee other than an Affiliate of Company shall, if at the time no Event of Default shall have occurred and be continuing, be automatically released from the lien of this Mortgage and Security Agreement without the necessity of any accounting to Mortgagee, and Mortgagee will execute such instruments of release thereof from the lien and security interest hereunder as Company may reasonably request.

For the purposes of this Section 4.02: the term "real estate" shall include any interest in real estate, any lease of real estate and any rents under any such lease; and the Omaha First Mortgage shall not be considered to be a Prior or Parity Mortgage.

ARTICLE V

CONSOLIDATION, MERGER, CONVEYANCE OR LEASE

SECTION 5.01. *Consolidation, Merger, Conveyance or Lease by Company.* Nothing in this Mortgage and Security Agreement shall prevent the consolidation of Company with, or the merger of Company into, any other corporation lawfully entitled to acquire the Mortgaged Property, or shall prevent any conveyance or lease, subject to the continuing lien of this Mortgage and Security Agreement, of all or substantially all of the Mortgaged Property to any such other corporation; provided however, that:

(a) Every such consolidation, merger, conveyance or lease shall be on such terms as shall fully preserve the lien and security interest of this Mortgage and Security Agreement and the rights and powers of Mortgagee hereunder.

(b) Any such lease shall be expressly made subject to immediate termination by Mortgagee, at any time upon the occurrence and during the continuance of an Event of Default.

(c) Upon any such consolidation, merger, conveyance or lease the successor corporation or the lessee corporation, as the case may be, shall expressly assume the due and punctual performance of all the terms, agreements and covenants of this Mortgage and Security Agreement and of the Financing Agreement and of any writing executed pursuant to the Financing Agreement required to be kept, preserved or performed by Company.

(d) In the event of any such consolidation, merger or conveyance, the successor corporation shall, subject to the exceptions provided in Section 5.02 hereof, expressly grant and convey, as further security for the payment and performance of the Secured Obligations, and shall subject to the lien and security interest of this Mortgage and Security Agreement, all of its property and

franchises then owned and which it may thereafter acquire of the character and kind which, under the terms of this Mortgage and Security Agreement, are required to be subjected to the lien and security interest hereof, all as fully as though such consolidation, merger or conveyance had not taken place and such property and franchises had been acquired by Company.

In the event of any such consolidation, merger or conveyance, the successor corporation shall cause to be executed and delivered to Mortgagee a supplemental indenture to this Mortgage and Security Agreement, confirming and evidencing the requirements of this Section 5.01, whereupon such successor corporation shall succeed to and be substituted for Company with the same force and effect as if such successor corporation had been named in and had executed this Mortgage and Security Agreement as the party of the first part hereto, and may exercise every power, authority and right herein reserved to or conferred upon Company; provided, however, that in the event of any such conveyance, the corporation making such conveyance shall not be relieved of any liability under this Mortgage and Security Agreement.

For the purposes of this Article V, the term "conveyance" shall mean any sale, conveyance or transfer, and the term "successor corporation" shall mean the corporation resulting from any such consolidation, the corporation surviving any such merger, or the corporation to which any such conveyance shall be made.

SECTION 5.02. *Limitation of Lien on Property of Successor Corporation.* In the event there shall be a consolidation of Company with a corporation which immediately prior to such consolidation shall have been a Class I Carrier (as defined by the rules of the Interstate Commerce Commission in force on June 1, 1972) and not an Affiliate of Company (other than a New Carrier Affiliate of Company), or a merger of Company into, or a conveyance by Company of all or substantially all of the Mortgaged Property to, a corporation which immediately preceding such merger or conveyance shall have been a Class I Carrier (as so defined) and not an Affiliate of Company (other than a New

Carrier Affiliate of Company), the successor corporation may, but need not, make an express grant of its property and franchises as provided in subparagraph (d) of the first paragraph of Section 5.01 hereof, and in the absence of such express grant by such successor corporation, this Mortgage and Security Agreement shall not, by reason of such consolidation, merger or conveyance, constitute and become a lien upon or security interest in, and the term "Mortgaged Property" shall not include or comprise, the following:

(a) any property, right or franchise which, immediately prior to such consolidation, merger or conveyance, was owned by any corporation (other than Company) which is a party to such consolidation or merger or by the corporation to which Company may make such conveyance; or

(b) any property, right or franchise which may be purchased, constructed or otherwise acquired by such successor corporation after the date of such consolidation, merger or conveyance, excepting only the property, rights and franchises referred to in clauses (i) through (v) of the next following paragraph, which, as and when purchased, constructed or otherwise acquired by such successor corporation, shall be and become subject to the lien and security interest of this Mortgage and Security Agreement.

Any supplemental indenture provided for by Section 5.01 hereof which, by reason of the provisions of this Section 5.02, is not required to contain an express grant by the successor corporation of its property and franchises as provided in subparagraph (d) of the first paragraph of Section 5.01, shall in any event contain an express grant by such successor corporation, confirming the lien and security interest of this Mortgage and Security Agreement upon the Mortgaged Property in existence immediately prior to the consolidation, merger or conveyance, and subjecting to the lien and security interest of this Mortgage and Security Agreement, as fully as if such consolidation, merger or conveyance had not taken place and the same had been acquired by the original party of the first part hereto, the following property, rights and franchises

purchased, constructed or otherwise acquired by such successor corporation after the date of such consolidation, merger or conveyance:

(i) all property which shall be acquired with moneys from any fund under the North Western First Mortgage, the Great Western First Mortgage, the Great Western General Income Mortgage, the M. & St. L. Mortgage or Other Mortgages, or with cash at any time held under any such Mortgage by the Trustee thereunder, or in exchange for property released from the lien of any such Mortgage, and all property the acquisition or construction of which shall be made the basis for any withdrawal of cash under any provision of any such Mortgage;

(ii) all betterments, extensions, improvements and additions, of, to, upon or for the property, rights and franchises subject to the lien and security interest of this Mortgage and Security Agreement;

(iii) all repairs, renewals, replacements, substitutions and alterations of, to, upon or for the property, rights and franchises subject to the lien and security interest of this Mortgage and Security Agreement;

(iv) all property, rights and franchises appurtenant to any property subject to the lien and security interest of this Mortgage and Security Agreement; and

(v) an appropriate portion, properly identified so as to effectively create a lien and security interest hereunder, of all property (not covered by the preceding clauses (i) through (iv)) purchased, constructed, or otherwise acquired after the date of such consolidation, merger or conveyance and which shall consist of equipment (whether or not transportation equipment), and additions, betterments and improvements thereto, inventory, accounts, contract rights, chattel paper and general intangibles, which appropriate portion shall be determined on the basis of the percentage of the revenues of the successor corporation which may be expected to be attributable to rights and franchises of the successor corporation subject to the lien and security interest of this Mortgage and

Security Agreement; and any final determination of such appropriate portion by the Interstate Commerce Commission or other federal governmental authority having jurisdiction of the consolidation, merger or conveyance shall be conclusive.

SECTION 5.03. *Merger into or Conveyance to Company.* Nothing contained in this Mortgage and Security Agreement shall prevent Company from merging into itself, or acquiring by conveyance all or any part of the property and franchises of, any other corporation, whether or not an Affiliate of Company.

In case Company shall acquire by any such merger or conveyance all or substantially all of the property of any other corporation which immediately prior to such merger or conveyance shall have been a Class I Carrier (as defined by the rules of the Interstate Commerce Commission in force on June 1, 1972) and not an Affiliate of Company (other than a New Carrier Affiliate of Company), this Mortgage and Security Agreement shall not, by reason of such merger or conveyance, constitute and become a lien upon or security interest in, and the term "Mortgaged Property" shall not include or comprise, the following:

(a) any property, right or franchise of such other corporation so acquired; and

(b) to the extent requested by Company, any property, right or franchise which may be purchased, constructed or otherwise acquired by Company after the date of such merger or conveyance and which, if such merger or conveyance had instead been a transaction whereunder Company merged into a successor corporation and such property, right or franchise were purchased, constructed or otherwise acquired by such successor corporation, would not have been required by the provisions of Section 5.02 hereof to be subjected to the lien and security interest of this Mortgage and Security Agreement; and

upon request of Company, Mortgagee will join in the execution and delivery of a supplemental indenture to this Mortgage and Security Agreement confirming and evidencing the foregoing.

ARTICLE VI

REMEDIES OF MORTGAGEE

SECTION 6.01. *Events of Default.* If one or more of the following events herein called "Events of Default" shall occur, that is to say:

(a) an event of default as defined in the Financing Agreement shall have occurred and either (1) as a result thereof Mortgagee makes any payment pursuant to Mortgagee's guarantee under the Financing Agreement or (2) Mortgagee's obligation under the Financing Agreement to make such payment shall terminate or shall have terminated; or

(b) in the absence of the occurrence of an event of default as defined in the Financing Agreement, default shall be made by Company in the observance, performance or payment of any Secured Obligations and such default shall continue for 90 days after notice setting forth such default and requiring the same to be remedied shall have been given to Company by Mortgagee; provided, however, that if such default is one which cannot be cured by Company within such 90 days, such period of 90 days shall be extended for such additional period during which Company is diligently seeking to cure such default;

then and in each and every such case, Mortgagee, personally or by its agents or attorneys, may, by notice to Company declare to be and become immediately due and owing by Company to Mortgagee, and thereupon there shall immediately become due and owing and payable to Mortgagee by Company, and Company agrees to pay forthwith to Mortgagee:

(i) in case of any Event of Default described in subparagraph (a) above, without affecting in any way the rights and remedies available to Mortgagee under the Financing Agreement, a sum

equal to the amount of any payment due Mortgagee by reason of such Event of Default; and

(ii) in case of any Event of Default described in subparagraph (b) above, a sum equal to the amount of damages suffered by Mortgagee as a result of the default by Company which shall have given rise to such Event of Default;

provided, however, that each Event of Default shall constitute an Event of Default only during such period of time during which an amount payable to Mortgagee with respect thereto remains unpaid.

SECTION 6.02. *Enforcement of Remedies.* So long as any Event of Default shall have occurred and be continuing, Mortgagee may from time to time, in its discretion, enforce and pursue any and all rights and remedies with respect to the Mortgaged Property or any part thereof (whether by foreclosure in judicial proceedings, sale with or without judicial proceedings, or otherwise) as may be available to it under applicable law. Any proceeds of any disposition by or on behalf of Mortgagee of the Mortgaged Property or any part thereof may be applied by it to the payment of expenses in connection with all or any part of the Mortgaged Property and disposition thereof, including reasonable attorneys fees and legal expenses, and any balance of such proceeds may be applied by Mortgagee, in such order of application as it may determine in its discretion, to the payment of all or any part of any sum then payable to Mortgagee under the provisions of Section 6.01 hereof, without relieving Company from any liability with respect to any portion of such sum remaining unpaid after such application.

SECTION 6.03. *No Waiver.* No failure or delay on the part of Mortgagee in the exercise of any right or remedy under or with respect to this Mortgage and Security Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

ARTICLE VII

TERMINATION

This Mortgage and Security Agreement, and the lien hereof and the security interest hereunder, shall terminate and cease to be of any further force and effect, on the date on which the Financing Agreement terminates or on such earlier date as may be agreed to in writing by Company and Mortgagee. Upon any such termination of this Mortgage and Security Agreement, Mortgagee will execute such instruments of release and satisfaction of this Mortgage and Security Agreement as Company may reasonably request.

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01. *Certain Action by Mortgagee.* Mortgagee agrees that in the event (a) any holder (or any Trustee for or representative of any holder) of any obligation secured by the terms existing at the date hereof of any Permitted Encumbrance existing at the date hereof shall at any time give written notice either to Mortgagee or Company to the effect that any provision of this Mortgage and Security Agreement constitutes a default in the observance or performance of any covenant, condition, or agreement on the part of Company contained under or in connection with such Permitted Encumbrance and requiring such default to be remedied, and (b) a written opinion, addressed to Mortgagee, of independent counsel for Company to the effect that such a default exists shall be given to Mortgagee, then Mortgagee will, as promptly as practicable, take such action, including such amendment of any provision of this Mortgage and Security Agreement and the release or subordination of any lien or security interest hereunder, as such counsel shall specify in such opinion as the minimum action required to be

taken by Mortgagee in order to remedy any such default. Mortgagee and Company each agrees to immediately notify the other upon receipt by it of any written notice to the foregoing effect from any such holder, Trustee or representative.

SECTION 8.02. *Notices.* All notices and communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed by certified or registered mail, postage prepaid, as follows:

(a) If to Mortgagee, to:

Federal Railroad Administrator
Attn: Associate Administrator
for Federal Assistance
400 Seventh Street, S.W.
Washington, D.C. 20590

or in such other manner as Mortgagee may from time to time specify by notice to Company; and

(b) If to Company, to:

Chicago and North Western Transportation Company
c/o Sonnenschein Carlin Nath & Rosenthal
8000 Sears Tower
Chicago, Illinois 60606

or in such other manner as Company may from time to time specify by notice to Mortgagee.

SECTION 8.03. *Headings.* The various headings used in this Mortgage and Security Agreement for Articles or Sections are for convenience only and shall not be used in interpreting this Mortgage and Security Agreement or the text of any Article or Section hereof.

SECTION 8.04. *Severability.* Wherever possible, each provision of this Mortgage and Security Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if for any reason whatsoever, any provision of this Mortgage and Security

Agreement shall be held or deemed to be inoperative, unenforceable or invalid as applied to any particular case or cases in any particular jurisdiction or jurisdictions or in all jurisdictions or in all cases, such circumstances shall not have the effect of rendering such provision inoperative, unenforceable or invalid in any other jurisdiction or in any other case or of rendering any other provisions of this Mortgage and Security Agreement inoperative, unenforceable or invalid.

SECTION 8.05. *Successors and Assigns.* This Mortgage and Security Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and subject to the provisions of Article V hereof, their respective successors and assigns.

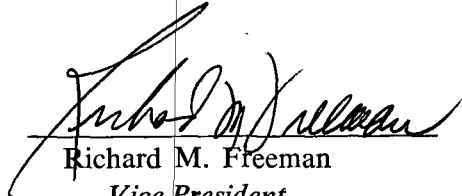
SECTION 8.06. *Counterparts.* This Mortgage and Security Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute together but one and the same instrument.

IN WITNESS WHEREOF, Chicago and North Western Transportation Company has caused this Mortgage and Security Agreement to be signed on its behalf and acknowledged by its President or a Vice President and its corporate seal to be affixed hereto attested by its Secretary or an Assistant Secretary, and the United States of America, represented by the Secretary of Transportation acting through the Administrator of the Federal Railroad Administration, has caused this Mortgage and Security Agreement to be signed on its behalf and acknowledged, and the seal of the Federal Railroad Administration to be affixed thereto, by the Administrator of the Federal Railroad Administration, all as of the date first above written.

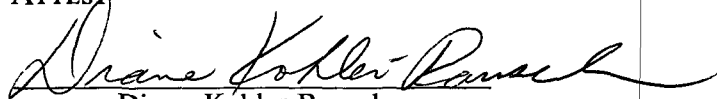
CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

[CORPORATE SEAL]

By


Richard M. Freeman
Vice President

ATTEST


Diane Kohler-Rausch
Assistant Secretary

In the presence of:

Janet A. Scott
Janet A. Scott

Melvin F. Chatterton
Melvin F. Chatterton

UNITED STATES OF AMERICA
By the
SECRETARY OF TRANSPORTATION
Acting through the
ADMINISTRATOR OF THE
FEDERAL RAILROAD ADMINISTRATION

By John M. Sullivan
John M. Sullivan
Administrator

[SEAL]

In the presence of:

Robert F. Heath
Robert F. Heath

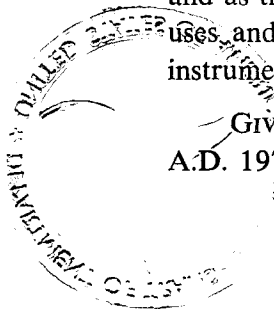
Carol E. Owens
Carol E. Owens

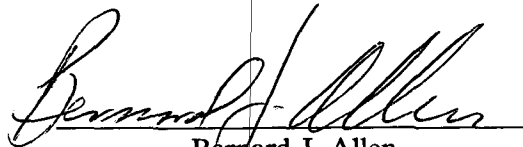


STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

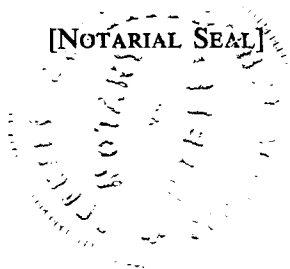
I, BERNARD J. ALLEN, a Notary Public in and for said County, DO HEREBY CERTIFY that RICHARD M. FREEMAN, personally known to me to be a Vice President of Chicago and North Western Transportation Company, a Delaware corporation, and DIANE KOHLER-RAUSCH, personally known to me to be an Assistant Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, appeared before me this day in person, and, being by me duly sworn, severally said and acknowledged that they are a Vice President and an Assistant Secretary, respectively, of said corporation, that they signed and delivered said instrument as Vice President and Assistant Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and that the seal affixed to said instrument is the corporate seal of said corporation.

GIVEN under my hand and notarial seal this 7th day of March, A.D. 1978.




Bernard J. Allen
Notary Public

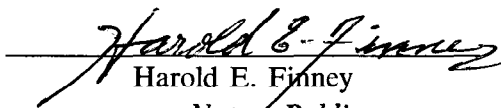
My commission expires July 18, 1978.



DISTRICT OF }
COLUMBIA, } ss.

I, HAROLD E. FINNEY, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY that JOHN M. SULLIVAN, personally known to me to be the Administrator of the Federal Railroad Administration, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Administrator, appeared before me this day in person, and, being by me duly sworn, said and acknowledged that he is the Administrator of the Federal Railroad Administration, that he signed, affixed thereto the seal, and delivered said instrument as Administrator of the Federal Railroad Administration, on behalf of the United States of America, pursuant to authority given by the Secretary of Transportation (49 CFR 1.49(u)) as his free and voluntary act, and as the free and voluntary act and deed of the Secretary of Transportation and the United States of America, for the uses and purposes therein set forth, and that the seal affixed to said instrument is the seal of the Federal Railroad Administration.

GIVEN under my hand and notarial seal this 8th day of March, A.D. 1978.


Harold E. Finney
Notary Public

My commission expires February 14, 1980.

[NOTARIAL SEAL]

